

# Claims costs climb into \$100 million territory

Our readers will by now be familiar with the news that total claims costs (including internal handling costs) for each of the 2011 and 2012 policy years are expected to be in the \$100 million ballpark.

Our ongoing actuarial analysis makes it clear that claims costs of \$80 million and more (before internal adjusting expense) are now the norm, not the exception. This is a very significant development when compared to the trend for the earlier part of the last decade, during which annual claims costs came in consistently within a \$50 million to \$65 million range.

In the August 2012 issue of *LAWPRO Magazine*, President and CEO Kathleen Waters' editorial "Top 10 reasons we're in a \$100 million world" summarized our analysis of the causes of the growth in claims costs, which include:

- more claims (and more expensive claims) being reported;
- claims driven by communication problems and/or inadequate investigation or discovery of facts;
- more claims being reported in the litigation stage (instead of earlier, when they would be less expensive to resolve);
- more class action claims and more "cluster" claims;

- more claims by self-represented litigants and more claims by vexatious litigants; and
- economic factors, including growth in property values and the introduction of HST on defence costs.

Nevertheless, despite the elevated level of claims costs, the base premium for 2013 will remain at \$3,350 per insured lawyer – the same as it was for 2011 and 2012.

Why isn't the base premium going up if claims are so bad?

While many factors go into the premium-setting decision, the most important test is whether LAWPRO is expected to emerge from the policy year with an acceptable solvency test result. Sound program management, including the 2011 premium increase, careful investment choices in a tough market and efforts to contain administrative costs, have kept the program on a sound financial footing.

This sound management has allowed us to provide the bar with three consecutive years of premium stability. We're holding the line for now... but we're very concerned about the growth in claims costs. We'd like the bar to understand and share our concern: Expect to hear more from us in 2013 about how all lawyers can help reduce claims costs by taking steps to avoid malpractice errors.

## Why you don't (but should) think about Excess insurance

If you are relying on only the coverage offered under LAWPRO's mandatory insurance program to satisfy claims that may be made against you, you may be at financial risk. The coverage limits under the mandatory program are \$1 million per claim and \$2 million in the aggregate. The cost of resolving claims is growing every year, and the monetary value at risk in the cases you are handling may be growing as well. Consider the myths and realities below before making your decision about Excess coverage.

*"I've been practising for years without a claim. Even if I get sued it won't exceed the mandatory insurance limits."*

Lawyers are more likely to be sued in the tenth year of practice than in the first. Over time lawyers assume more responsibility for files, acquire more clients and take on larger and more complicated matters. Claims will also often take years to mature, so an error that occurred in the second year of practice may not be identified until some years

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